

07.18.11 - SHADOW - WA

CLOSED,JURYDEMAND

U.S. District Court
United States District Court for the Western District of Washington (Seattle)
CIVIL DOCKET FOR CASE #: 2:12-cv-00467-RAJ

Drabiszczak v Snohomish County, et al
Assigned to: Judge Richard A Jones
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 03/19/2012
Date Terminated: 07/12/2012
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff**Myron Drabiszczak**

represented by **Adam Karp**
ANIMAL LAW OFFICES
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ATTORNEY TO BE NOTICED

V.

Defendant

Snohomish County
a Washington municipal corporation

represented by **Sean D. Reay**
SNOHOMISH COUNTY
PROSECUTING ATTORNEY
(ROCKEFELLER)
3000 ROCKEFELLER AVE M/S 504
EVERETT, WA 98201-4046
425-388-7387
Email: sreay@co.snohomish.wa.us
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Defendant**Snohomish County Sheriff's Office**

represented by **Sean D. Reay**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Bryson McGee
in his individual and official capacities

represented by **Sean D. Reay**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant**Jane Doe McGee***and the marital community or domestic
partnership comprised thereof*represented by **Sean D. Reay**

(See above for address)

ATTORNEY TO BE NOTICED

Date Filed	#	clear	Docket Text
03/19/2012	1	<input type="checkbox"/>	COMPLAINT against defendant(s) SNOHOMISH COUNTY, Bryson McGee, SNOHOMISH COUNTY SHERIFF'S OFFICE (Receipt # 0981-2750273), filed by MYRON DRABISZCZAK.(Karp, Adam) (Entered: 03/19/2012)
03/19/2012	2	<input type="checkbox"/>	CIVIL COVER SHEET re 1 Complaint ; filed by Plaintiff MYRON DRABISZCZAK.. (Attachments: # 1 Summons McGee, # 2 Summons SCSO, # 3 Summons Snohomish County)(Karp, Adam) (Entered: 03/19/2012)
03/20/2012			Judge Richard A Jones added. (MKB) (Entered: 03/20/2012)
03/20/2012	3	<input type="checkbox"/>	Summons Issued as to defendants Bryson McGee, Snohomish County, Snohomish County Sheriff's Office. (Attachments: # 1 Summons, # 2 Summons)(MKB) (Entered: 03/20/2012)
03/20/2012			NOTICE to Filer - ATTACHEMENTS MISSING OR ATTACHMENTS FILED SEPARATLEY:Please remember the Civil Cover Sheet and the Summons(es) should be attachments to your Complaint. The summons(es) should NEVER be attached to the Civil Cover Sheet, but instead, if you have forgotten to attach them to the Complaint, use the event Praecipe For A Summons under Other Documents. (MKB) (Entered: 03/20/2012)
03/23/2012	4	<input type="checkbox"/>	NOTICE of Appearance by attorney Sean D. Reay on behalf of Defendant Snohomish County. (Reay, Sean) (Entered: 03/23/2012)
03/28/2012	5	<input type="checkbox"/>	AFFIDAVIT of Service of Summons and Complaint on Melanie Melema on 3/20/2012, filed by Plaintiff Myron Drabiszczak. (Karp, Adam) (Entered: 03/28/2012)
04/11/2012	6	<input type="checkbox"/>	WAIVER of Service of Bryson McGee by Defendants Bryson McGee, Snohomish County, Snohomish County Sheriff's Office. (Reay, Sean) (Entered: 04/11/2012)
04/11/2012	7	<input type="checkbox"/>	NOTICE of Appearance by attorney Sean D. Reay on behalf of Defendant Bryson McGee. (Reay, Sean) (Entered: 04/11/2012)
04/16/2012	8	<input type="checkbox"/>	ORDER REGARDING INITIAL DISCLOSURES, JOINT STATUS REPORT AND EARLY SETTLEMENT. FRCP 26f Conference Deadline is 6/6/2012, Initial Disclosure Deadline is 6/13/2012, Joint Status Report due by 6/20/2012, by Judge Richard A. Jones. (VE) (Entered: 04/16/2012)
05/18/2012	9	<input type="checkbox"/>	ANSWER to Complaint by Bryson McGee, Jane Doe McGee, Snohomish County, Snohomish County Sheriff's Office.(Reay, Sean) (Entered: 05/18/2012)

06/12/2012	10	<input type="checkbox"/>	JOINT STATUS REPORT signed by all parties estimated Trial Days: 3.. (Karp, Adam) (Entered: 06/12/2012)
06/22/2012	11		MINUTE ORDER SETTING TRIAL DATE AND RELATED DATES. Length of Trial: 4 days. <i>JURY TRIAL</i> is set for 3/18/2013 at 9:00 AM in Courtroom 13106 before Judge Richard A. Jones. Joinder of Parties due by 7/31/2012, Amended Pleadings due by 9/19/2012, Expert Witness Disclosure/Reports under FRCP 26(a)(2) due by 9/19/2012, Discovery completed by 11/19/2012, Dispositive motions due by 12/18/2012, Settlement conference to be held by 1/17/2013, 39.1 mediation to be completed by 2/19/2013, Motions in Limine due by 2/19/2013, Pretrial Order due by 3/4/2013, Trial briefs, proposed jury instructions, proposed voir dire, agreed neutral statement of the case, deposition designations, and trial exhibits to be submitted by 3/11/2013, by Judge Richard A. Jones. DOCKET ENTRY REPLACED BY 12 . (Entered: 06/22/2012)
06/22/2012	12	<input type="checkbox"/>	MINUTE ORDER SETTING TRIAL DATE AND RELATED DATES. Length of Trial: 4 days. <i>JURY TRIAL</i> is set for 3/18/2013 at 9:00 AM in Courtroom 13106 before Judge Richard A. Jones. Amended Pleadings due by 9/19/2012, Expert Witness Disclosure/Reports under FRCP 26(a)(2) due by 9/19/2012, Discovery completed by 11/19/2012, Dispositive motions due by 12/18/2012, Settlement conference to be held by 1/17/2013, 39.1 mediation to be completed by 2/19/2013, Motions in Limine due by 2/19/2013, Pretrial Order due by 3/4/2013, Trial briefs, proposed jury instructions, proposed voir dire, agreed neutral statement of the case, deposition designations, and trial exhibits to be submitted by 3/11/2013, by Judge Richard A. Jones. (VE) (Entered: 06/22/2012)
07/11/2012	13	<input type="checkbox"/>	STIPULATION AND PROPOSED ORDER <i>Dismissing Snohomish County Defendants</i> by parties. (Reay, Sean) (Entered: 07/11/2012)
07/12/2012			This action is dismissed with prejudice and without costs to any party in accordance with the parties' stipulation (Dkt. # 13) and Fed. R. Civ. P. 41(a)(1)(A)(ii). No court order is necessary.(CL) (Entered: 07/12/2012)

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7 **UNITED STATES DISTRICT COURT**
WESTERN DISTRICT OF WASHINGTON

8 **MYRON DRABISZCZAK;**

9 Plaintiff,

10 vs.

11 **SNOHOMISH COUNTY,** a
12 Washington municipal corporation;
13 **SNOHOMISH COUNTY**
SHERIFF'S OFFICE; BRYSON
14 **MC GEE,** in his individual and official
15 capacities; and the marital community
or domestic partnership comprised of
BRYSON MC GEE and JANE DOE
MC GEE.

16 Defendants.

Case No.: 12-CV-0467

COMPLAINT

Jury Demanded

17 Plaintiff **MYRON DRABISZCZAK**, through attorney of record **ADAM P.**
18 **KARP** of **ANIMAL LAW OFFICES**, alleges:
19

20 **I. JURISDICTION AND VENUE**

21 1. This Court has jurisdiction over the subject matter of this action
22 pursuant to 28 U.S.C. §§ 1331, 1367; and venue is properly set in the United States
23
24
25

COMPLAINT - 1

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1 District Court for the Western District of Washington pursuant to 28 U.S.C. §
2 1391.

3 2. The causes of action arise from factual allegations occurring in this
4 judicial district.

5
6 3. Plaintiff is informed and believes, and on that basis alleges, that each
7 of the named Defendants is situated in this judicial district.

8 4. Plaintiff **MYRON DRABISZCZAK** (“Drabiszczak”) resides in
9 Snohomish County, State of Washington.

10
11 5. Now-deceased, seven-year-old neutered male German Shepherd Dog
12 named **SHADOW** (“Shadow”) is, and at all times relevant herein was, regarded by
13 Drabiszczak as both his sentient personalty and immediate family member.

14
15 6. **SNOHOMISH COUNTY** is a municipal corporation, organized
16 under the laws of the State of Washington, including for purposes of liability under
17 42 U.S.C. § 1983. It operates the **SNOHOMISH COUNTY SHERIFF’S**
18 **OFFICE** (“Sheriff”), the entity for which **MCGEE** worked during the incident
19 complained of.

20
21 7. Defendant **BRYSON MCGEE** (“McGee”) is, and at all germane
22 times was, a resident of Snohomish County, and employee and/or agent of Sheriff
23 acting within the scope of his employment for purposes of state law, and under
24 color of state law for purposes of federal law. He is being sued in his personal and
25

COMPLAINT - 2

official capacities. The marital or domestic partnership community of **BRYSON MCGEE and JANE DOE MCGEE** has also been sued on the basis that the acts of McGee enriched the marital or domestic partner community. Should such community not exist, McGee is sued individually.

8. Plaintiff's claim for attorney's fees and costs is authorized by, *inter alia*, 42 U.S.C. § 1988. No administrative claim filing or other pre-litigation requirements apply to his claims against McGee and County under 42 U.S.C. § 1983.

9. On or about Jan. 5, 2012, Snohomish County was duly served with a *Claim for Damages* on behalf of Drabiszczak in full compliance with state and county claim-notice laws. More than sixty days have elapsed since Drabiszczak filed the claim with the County.

10. This court has personal jurisdiction over the Defendants.

II. GENERAL ALLEGATIONS

11. On Jul. 18, 2011, Drabiszczak owned Shadow and cared for him at his premises of 41329 May Creek Rd., Goldbar, Wash, coined by Drabiszczak as "Shadow Creek." Shadow was the premises's namesake.

12. On Jul. 18, 2011, Drabiszczak learned that his brother Daniel Drabiszczak had been found deceased in a van in the city limits of Goldbar. While meeting with law enforcement officers and the coroner at the scene of his brother's

COMPLAINT - 3

1 death, McGee informed Drabiszczak that he had very recently killed Shadow on
2 Drabiszczak's private property.

3 13. On information and belief, at no time did the County Medical
4 Examiner ask the Sheriff to deliver death notification in-person to Drabiszczak as
5 its agent or to assist the Medical Examiner in this task.
6

7 14. Indeed, officer notification was not warranted under these
8 circumstances because there was no problem obtaining information regarding
9 Drabiszczak's correct address, nor was there any extreme burden arising due to
10 geographical location, case work-load time restraints or other factors that
11 precluded in-person notification by Medical Examiner staff. Additionally, this was
12 not an active homicide or suspicious death case, as Dep. Haley admittedly
13 "changed the call type from suspicious to unattended death investigation" prior to
14 calling for an Aid car and upon confirming death.
15
16

17 15. Notwithstanding the absence of such request, as described in SCSO
18 Policy 9.04.00(B) and Medical Examiner Policy 8.2, McGee took it upon himself
19 to attempt in-person death notification without the presence of the Snohomish
20 County Medical Examiner's Office Investigator.
21

22 16. Though purportedly going to Drabiszczak's premises to deliver a
23 death notification, neither McGee nor any employee or agent of the County/Sheriff
24 phoned Drabiszczak to relate the information.
25

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1 17. At approximately 6:25 p.m. on Jul. 17, 2011, as more fully described
2 below, McGee repeatedly shot Shadow with a firearm while on Drabiszczak's
3 premises, killing Shadow.

4 18. Minutes prior, without permission to enter, without a warrant, without
5 an exception to the warrant requirement, and despite observing a closed gate
6 blocking the driveway to Drabiszczak's residence, affixed to which was a
7 conspicuous sign stating "POSTED – NO TRESPASSING," McGee opened the
8 gate and drove his vehicle toward the premises.
9
10

11 19. Before McGee reached the residence, again without permission to
12 enter, a warrant, or pursuant to an exception to the warrant requirement, and
13 despite observing a tree directly ahead upon which were posted two conspicuous
14 signs stating "BEWARE of DOG" and "DEAD END" (with an image of a
15 Tyrannosaurus Rex or similar prehistoric, carnivorous dinosaur), McGee ignored
16 same and continued driving to Drabiszczak's residence.
17
18

19 20. Once McGee pulled near Drabiszczak's home, he exited his vehicle
20 and proceeded toward the house on foot. Before he saw Shadow, he heard a dog
21 bark, yet he did not return to his vehicle. Instead, he continued toward the house.
22 Despite knowingly and intentionally trespassing, McGee shot at Shadow on
23 Drabiszczak's premises two times without lawful justification.
24

25 21. At no time that day did Shadow bite, injure, or make physical contact

COMPLAINT - 5

1 with McGee or any other law enforcement officer or County employee.

2 22. Though Shadow was injured and McGee was able to return to his
3 vehicle, instead of seeking veterinary treatment or contacting animal control, he
4 instead fired a third shot at Shadow into his thoracic cavity, killing him near
5 Drabiszczak's home. This action violated Snohomish County Sheriff's Office
6 ("SCSO") Policy 10.07/010.00(G) as no effort was made to seek the assistance of
7 the Animal Control Unit and Shadow was not "so badly injured that humanity
8 require[d] its relief from further suffering." Further, any purported attempt to
9 euthanize Shadow with the third shot did not comply with standard veterinary,
10 animal control, and law enforcement protocols and standards (viz., gunshot to the
11 brain).

12 23. Based on Shadow's good nature, socialization, and lack of any
13 adverse animal control history (e.g., declaration as dangerous, vicious, potentially
14 dangerous) documented prior to Shadow's death, on information and belief,
15 Shadow did not act in such a way that a reasonably prudent officer would believe
16 warranted the use of deadly force in quantum or nature as described herein.

17 24. Though authorized to use less-lethal weapons against animals, per
18 SCSO Policy 10.05/010.00, McGee never deployed same but instead immediately
19 and exclusively deployed deadly force.

20 25. Drabiszczak returned home to witness the deceased body of Shadow
21 **COMPLAINT - 6**

1 only minutes after coming from the scene of the deceased body of this brother.

2 26. Following the incident, McGee faced no discipline from the County
3 and on Aug. 30, 2011, the County expressly exonerated McGee of the complaint
4 filed by Drabiszczak with SCSO, showing ratification by the County of McGee's
5 behavior.
6

7 27. The County/Sheriff's policy and/or custom on shooting animals to
8 death, SCSO Policy 10.07/010.00(H)(1), effective at the time of the slaying of
9 Shadow, authorized deputies to bypass the use of force continuum, use of force
10 guidelines, and post-force medical assistance applicable in encounters involving
11 humans (see SCSO Policy 10.00/010.00 and 10.00/020.00) and instead deploy
12 lethal force and kill dogs in "self defense," without defining the term or setting
13 forth any bounds to respect constitutional limits on the use of force – utterly unlike
14 the use of force policy outlined in detail with respect to human beings.
15
16

17 28. Further, the County/Sheriff failed to train McGee in the constitutional
18 limits on the use of force against animals. Given the prevalence and foreseeability
19 of officers encountering canines, the need for more or different training was so
20 obvious that constitutional violations would likely result as to render the
21 County/Sheriff liable for Shadow's death and Drabiszczak's concomitant
22 constitutional injuries.
23
24

25 29. Notwithstanding the fact that McGee had no authorization to make the
COMPLAINT - 7

1 next of kin death notification, as described above, SCSO Policy 9.04.00(B) and
2 County Medical Examiner's Policy 8.2, by prioritizing and defaulting to in-person
3 next-of-kin death notifications over telephonic notifications, were a moving force
4 behind the constitutional violations alleged herein.

5
6 30. Drabiszczak lost the intrinsic value of Shadow, as based on his unique
7 qualities, characteristics, behaviors, personality, training, and bond, as well as the
8 loss of his utility, companionship, love, affection, protection, and solace. At the
9 time of his death, Shadow had no fair market value and could not be replaced or
10 reproduced. Any reasonable person in his position would not willingly have sold
11 Shadow at the time just prior to Shadow's death. At that moment, and thereafter,
12 Shadow had an immense intrinsic value to the Drabiszczak.

13
14
15 31. Shadow and Drabiszczak formed a strong relationship, causing
16 Shadow to fundamentally change under Drabiszczak's care. He was a close family
17 companion and had special value, aiding Drabiszczak in his enjoyment of life,
18 well-being, growth, development, and daily activities.

19
20 32. Drabiszczak experienced severe emotional distress from the acts and
21 omissions identified herein.

22 **III. CLAIMS FOR RELIEF**

23
24 71. The County is liable to Drabiszczak based on the following legal
25 claims and doctrines, stated in the alternative under FRCP 8(d)(2), and based on
COMPLAINT - 8

direct and vicarious liability for pendent state claims (e.g., respondeat superior [imputing fault to County based on acts and omissions of McGee and other County employees]). All allegations above are incorporated by reference and reasserted as to claims 1-6 below.

FEDERAL CLAIM

72. **FIRST CLAIM (McGee)** – Violation of Federal Constitutional Guarantees (42 U.S.C. § 1983), as to McGee, whose actions were taken under color of law, violating clearly established rights, of which a reasonable person would have been aware at the time those actions of omission and commission were taken by him. McGee unlawfully and unconstitutionally encroached upon Drabiszczak's private place (i.e., his premises) and then seized Drabiszczak's person, to wit, Shadow, in violation of the Fourth Amendment to the United States Constitution.

73. **SECOND CLAIM (County)** – Violation of Federal Constitutional Guarantees (42 U.S.C. § 1983), as to County, based on policy, custom, and ratification as stated above, and defective training, pursuant to the doctrines set forth in *Monell v Dept. of Soc. Serv.*, 436 U.S. 658 (1978) and progeny, as the moving force behind the constitutional injuries stated in the First Claim.

PENDENT STATE CLAIMS

74. **THIRD CLAIM** – Trespass to Land
COMPLAINT - 9

1 75. **FOURTH CLAIM** –Conversion and/or Trespass to Chattels

2 76. **FIFTH CLAIM** – Gross Negligence, Willful Misconduct, and/or
3 Reckless Property Damage/Destruction

4 77. **SIXTH CLAIM** – Negligence

5 78. Drabiszczak reserves the right to amend the Complaint to raise
6 additional, alternative claims for relief as discovery commences.
7

8 79. **JURY DEMAND:** Drabiszczak demands a jury.

9
10 **PRAYER**

11 WHEREFORE, Drabiszczak prays for judgment against Defendants as
12 follows:

13 A. For economic damages, representing the intrinsic value and loss of use of
14 Shadow, subject to proof and modification at trial;

15 B. For special and general damages relating to loss of Shadow's utility;

16 C. For noneconomic damages, including emotional distress, loss of
17 enjoyment of life, and interference with quiet use and enjoyment of realty
18 and personalty, subject to proof and modification at trial;
19

20 D. For veterinary expenses pertaining to Shadow's post-mortem assessment,
21 and disposition;
22

23 E. For prejudgment interest on liquidated sums;

24 F. For punitive damages against McGee;
25

COMPLAINT - 10

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1 G. For reasonable attorney's fees and other litigation-related costs as
2 allowed by law under 42 U.S.C. § 1988, or, in the alternative, statutory
3 attorney's fees;

4 H. For costs of suit;

5 I. For postjudgment interest at the highest rate permitted by law;

6 J. For such other and further relief as the Court may deem just and proper.

7 **K. NOTICE: Plaintiff intends to seek money damages against the**
8 **Defendants in excess of \$10,000. Accordingly, this case is not subject**
9 **to RCW 4.84.250-.280.**
10

11 Dated this Mar. 19, 2012.

12 ANIMAL LAW OFFICES

13 /s/ Adam P. Karp
14

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